

position that requires the Commission to deviate from the plain language of Section 214(e), ignore the conclusions of the FCC, and adopt an outcome which delays and avoids competition, depriving consumers access to competitive service offerings.

## **II. STATEMENT OF THE CASE**

This matter commenced on August 31, 1998, when GCC, a wholly-owned subsidiary of Western Wireless Corporation (“Western Wireless”) filed an Application to be designated as an ETC in Nebraska. GCC’s Application sought designation for receipt of federal universal service funds, and for receipt of funds from the Nebraska Universal Service Fund (“NUSF”).

Petitions for formal intervention were filed by numerous local exchange carriers which refer to themselves collectively as the “Independents.” (See Procedural Progression Order, March 9, 1999.) Each of the Independents is an incumbent LEC, a rural telephone company, and the only designated ETC in the rural service areas in which GCC seeks ETC designation. A separate group of rural LECs (Arapahoe, Benkelman, Cozad, Curtis, Diller, Henningford, Henderson and Wauneta) also intervened, but they serve exchanges outside the scope of by GCC’s requested designated service areas.

US WEST Communications, Inc. (“US WEST”) similarly sought intervention. (Id.) US WEST is an incumbent LEC providing landline local exchange service in certain areas of Nebraska for which it holds a certificate of public convenience and necessity from the Commission, and is the only designated ETC for the non-rural exchanges for which GCC seeks ETC designation.

GCC’s Application also seeks designation as an ETC for certain exchanges of Aliant Communications, Inc. (“Aliant Communications”) and GTE North, Inc. (“GTE”) in Nebraska. Both Aliant Communications and GTE are non-rural telephone companies who have been granted ETC stations by the Commission. (Ex. 11.)<sup>1</sup> However, neither Aliant

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<sup>1</sup> All prefiled testimony and exhibits will be referred to as “Ex. \_\_\_, p. \_\_\_,” and all transcript references will be designated by page number as “Tr. \_\_\_.”

Communications nor GTE intervened in this proceeding or otherwise opposed GCC's Application.

The Commission ordered a public hearing on GCC's Application, with evidentiary hearings held on October 20 and 21, 1999. GCC offered the testimony of Gene DeJordy. US WEST offered the testimony of Barbara M. Wilcox. The Independents offered the testimony of Steven E. Watkins, Cynthia L. Bittinger and Donald Macke.

### **III. STATEMENT OF FACTS**

#### **A. GCC AND ITS SERVICES**

GCC is authorized by the FCC and provides commercial mobile radio services in Nebraska under the brand name "Cellular One." (Ex. 3, p. 3.) Western Wireless, GCC's parent company, is the largest rural cellular carrier in the country. (Tr. 36.) The CMRS services provided by GCC include mobile telephony, data/facsimile, 911, voice mail and several other features and services. (Ex. 3, p. 3.) GCC provided a signal coverage map to demonstrate the areas in Nebraska where its wireless services are currently available. (Ex. 6.)

#### **B. BACKGROUND OF UNIVERSAL SERVICE SUPPORT MECHANISMS**

##### **1. Federal Universal Service Mechanisms**

In the Act, Congress directed the FCC and states to act jointly to establish support mechanisms to ensure the delivery of basic telecommunications services to all Americans. 47 U.S.C. § 254(a)(1). Although telephone service is widely available, there are difficulties associated with maintaining high subscribership levels in both rural, high cost areas and for low-income consumers. Prior to the Act, the states and the federal government attempted to increase access to basic telecommunications services in these areas through a series of implicit subsidies to the benefit of incumbent LECs, such as excessive access charges, provisioning of non-competitive services at above-cost rates and state geographically averaged rates.

By mandating the establishment of explicit federal and state universal service support mechanisms under the Act, Congress sought to move away from reliance on implicit subsidies, which are not sustainable in the competitive telecommunications environment envisioned by the Act. In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, FCC 97-157 (May 7, 1997), ¶ 17 (“Universal Service Order”). Rather, Congress envisioned that competition would drive costs and prices down in all telephone markets, with explicit federal and state subsidies then given to the ETC serving the consumer. Universal Service Order, ¶¶ 17-19; In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Seventh Report and Order, FCC 99-119 (May 28, 1999), ¶ 30 (“Seventh Report and Order”).

Through the Act, Congress directed the FCC to establish specific, predictable and sufficient support mechanisms for federal universal service, and mandated that all telecommunications carriers providing interstate service contribute to support those mechanisms. See 47 U.S.C. § 254(d). CMRS carriers like GCC contribute approximately 3.5% of their revenues to the federal fund. (Ex. 3, p. 4.) Starting in January 2000, eligible carriers providing universal service offerings in high-cost, rural areas served by non-rural telephone companies will begin receiving federal universal funding based upon the forward-looking cost of providing service as determined by the hybrid cost model adopted by the FCC. However, cost-based funding for eligible carriers serving high-cost, rural areas served by rural telephone companies is not slated to be available until the year 2001. In the Matter of Federal-State Joint Board on Universal Service, Ninth Report and Order and Eighteenth Order on Reconsideration, CC Docket No. 96-45 (Nov. 23, 1999), ¶ 11 (“Ninth Report and Order”). In recognition of the need to provide universal service support to carriers prior to the implementation of cost-based funding, the FCC has adopted rules that make available to all carriers today universal service funding based upon existing support mechanisms. Universal Service Order, ¶¶ 280-81. With federal universal service funding in place,

competitive carriers, like GCC, have begun the process of demonstrating to state commissions that they meet the requirements of Section 214(e) to be designated as an ETC.

Granting ETC designation does not in and of itself mean GCC will receive federal subsidies, but instead means GCC will be eligible to receive funding for those subscribers of its local universal service offerings that comply with the FCC's rules and regulations. Once designated, "a carrier's continuing status as an [ETC] is contingent upon continued compliance with the requirements of Section 214(e) and only an eligible carrier that succeeds in attracting and/or maintaining a customer base to whom it provides universal service will receive universal service support." Universal Service Order, ¶ 138. In addition, GCC's ability to receive support from the federal fund will not level the playing field with the incumbent LECs, because the LECs will continue to receive implicit subsidies not available to GCC. It will, however, prompt competition in the universal service market and is the first step in allowing consumers the benefits envisioned by the Act.

Both the Act and the FCC's Universal Service Order establish with great clarity the requirements for a carrier to be designated an ETC. Section 214(e)(1) requires a carrier to be a common carrier; provision a base set of supported services established by the FCC; advertise the availability of the services and charges; provision the supported services throughout a designated service area; and in areas served by rural LECs, demonstrate that designation of an additional ETC is in the public interest. 47 U.S.C. § 214(e)(1) and (2).

## **2. State Universal Service Mechanisms**

On January 13, 1999, the Commission entered its Findings and Conclusions in Application No. C-1628 to establish the NUSF ("NPSC Order"). (Ex. 15.) To be designated as an ETC and eligible for support from the NUSF, the Commission set forth the following requirements: (1) a carrier must be a facilities-based carrier; (2) a carrier must commit to serve an entire service area acceptable to the Commission; (3) a carrier must offer the NUSF supported services and meet all demand for supported services throughout its service area; (4) a carrier must satisfy the criteria set forth in Section 214(e) of the Act; and (5) a public

interest finding. (Ex. 15, NPSC Order, p. 3). The NUSF requirements are thus quite similar to the FCC's criteria for purposes of federal ETC designation.

As discussed below, GCC has demonstrated that it fully meets the requirements of Section 214(e) and the NPSC Order, and should be designated as a federal and state ETC in its requested designated service areas. ETC designation is proper under the Act, is consistent with the goals of competition embodied in the Act and will provide Nebraska residents with increased telecommunications choices, higher quality service and lower rates. (Ex. 3, pp. 20-22.)

#### IV. ARGUMENT

##### A. GCC MEETS ALL APPLICABLE ELIGIBILITY REQUIREMENTS

The Act establishes clear statutory directives for the Commission to follow in making an ETC designation for purposes of eligibility to receive federal universal support. Section 214(e)(1) of the Act provides:

A common carrier designated as an eligible telecommunications carrier under paragraph (2), (3), or (6) shall be eligible to receive universal service support in accordance with section 254 and shall, throughout the service area for which the designation is received -- (A) offer the services that are supported by Federal universal service support mechanisms under Section 254(c) of this title, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and (B) advertise the availability of such services and the charges therefor using media of general distribution.

47 U.S.C. § 214(e)(1) (emphasis added). For territories served by a non-rural telephone company, such as US WEST, the Commission must grant ETC status once the carrier demonstrates that it meets the statutory requirements. Section 214(e)(2) states that a "State commission shall . . . designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission." Id. § 214(e)(2) (emphasis added). For territories served by a rural telephone

company, the Commission must also make a finding that the designation of an additional ETC is in the “public interest.” 47 U.S.C. § 214(e)(2).

In its Universal Service Order, the FCC limited the federally-imposed criteria for ETC designation to those set forth in Section 214(e). The FCC stated, “[W]e adopt the statutory criteria contained in section 214(e)(1) as the rules for determining whether a telecommunications carrier is eligible to receive universal service support.” Universal Service Order, ¶ 24.<sup>2</sup> The FCC concluded, “[T]he plain language of section 214(e)(1) does not permit the [FCC] or the states to adopt additional criteria as prerequisites for designating carriers eligible communications carriers.” Universal Service Order, ¶ 24.

In addition to the clear directives of the FCC, this Commission has also recognized that the criteria of Section 214(e)(1) are mandatory and exclusive, and has proceeded to designate the incumbent LECs as ETCs on that basis. In its prior Order granting ETC statutes to the incumbent LECs, the Commission plainly stated, “We believe that to be designated an ETC, no criteria other than that set forth by the FCC and the Act should be required.” (Ex. 11, p. 2.) The Fifth Circuit Court of Appeals has held that states are not completely barred from imposing additional eligibility criteria. Texas Office of Public

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<sup>2</sup>The United States Supreme Court has reaffirmed the FCC's authority to interpret the Act: While it is true that the 1996 Act entrusts state commissions with the job of approving interconnection agreements, and granting exemptions to rural LECs, these assignments, like the rate-establishing assignment just discussed, do not logically preclude the [FCC's] issuance of rules to guide the state-commission judgments.

AT&T Corp. v. Iowa Utilities Bd., 119 S. Ct. 721, 733 (1999) (citations omitted).

Utility Council v. FCC, 183 F.3d 393, 418 (5th Cir. 1999) (“Texas PUC”). Because this Commission has declined to impose additional criteria, the Texas PUC holding on this point has no impact on this proceeding.

Through the evidence presented at the hearing, GCC has clearly demonstrated that it meets the statutory requirements of Section 214(e) and this Commission and is therefore entitled to be designated an ETC. Each of the governing criteria is discussed more fully below.

**1. GCC is a “common carrier”**

The undisputed evidence before the Commission demonstrates GCC meets the first Section 214(e)(1) requirement of being a “common carrier.” A “common carrier” is generally defined in 47 U.S.C. § 153(10) as a person engaged as a common carrier on a for-hire basis in interstate communications utilizing either wire or radio technology. A CMRS provider is considered a “common carrier” under 47 U.S.C. § 332(a)(1), unless otherwise determined by the FCC. (Ex. 3, pp. 8-9.) The FCC has specifically determined that cellular service such as that provided by GCC is considered a “common carrier” service. See 47 C.F.R. § 20.9(a)(7).

The FCC has also ruled specifically that a CMRS provider is eligible to be designated as an ETC:

We agree with the Joint Board's analysis and recommendation that any telecommunications carrier using any technology, including wireless technology, is eligible to receive universal service support if it meets the criteria under Section 214(e)(1).

See Universal Service Order, ¶ 145 (emphasis added). This directive was again reaffirmed in May 1999 in the FCC’s Seventh Report and Order:

All carriers, including commercial mobile radio service (CMRS) carriers, that provide the supported services, regardless of the technology used, are eligible for ETC status under Section 214(e)(1).

Seventh Report and Order, ¶ 72. These FCC directives, grounded in competitive and technological neutrality, are also codified in the FCC rules. See 47 C.F.R. § 54.101(h) (state commission shall designate a common carrier an ETC irrespective of the technology used by the carrier).

No intervenor introduced any evidence or otherwise disputed the fact that GCC satisfies the “common carrier” requirement under Section 214(e)(1). (Tr. 203-04; Tr. 253; Tr. 401.) Accordingly, the Commission must conclude that GCC meets this first prerequisite to ETC designation.

**2. GCC Provides the Supported Services Established by the FCC Under 47 C.F.R. § 54.101**

GCC’s evidence irrefutably demonstrates it currently provides each of the FCC’s supported services in satisfaction of the second requirement of Section 214(e)(1). Under FCC Rule 54.101(a), the FCC has identified the following nine (a) services and functionalities as the mandated core services to be offered by an ETC and supported by federal universal service support mechanisms:

1. voice-grade access to the public switched telephone network;
2. local usage;
3. dual tone multi-frequency signaling or its functional equivalent;
4. single-party service or its functional equivalent;
5. access to emergency services;
6. access to operator services;
7. access to interexchange service,
8. access to directory assistance; and
9. toll limitation for qualifying low-income consumers.

47 C.F.R. § 54.101(a).



GCC's evidence demonstrates that it currently provides all of the FCC's supported services under Rule 54.101(a) over its existing network infrastructure in Nebraska. (Ex. 4, p. 5.) Each of the specific supported services is discussed in detail below based on the record evidence.

a. Voice-grade access to the public switched telephone network

The FCC's first required service is voice-grade access to the public network. 47 C.F.R. § 54.101(a)(1). Voice-grade access means the ability to make and receive phone calls within a bandwidth of approximately 2700 Hertz between the 300 to 3500 Hertz frequency range. See Universal Service Fourth Order on Reconsideration, FCC 97-420 (Dec. 30, 1997); see Universal Service Order, ¶¶ 63-64.

The evidence before the Commission demonstrates GCC meets this requirement. Through its interconnection arrangements with local telephone companies, including US WEST, all customers of GCC are able to make and receive calls on the public switched telephone network within the prescribed frequency range. (Ex. 3, pp. 10-11.) Neither US WEST nor the Independents introduced any evidence or disputed the fact that GCC provides this supported service. (Tr. 205; Tr. 256; Tr. 407.)

b. Local usage

The second required supported service is local usage. 47 C.F.R. § 54.101(a)(2). Beyond merely providing access to the public switched telephone network, the FCC determined all ETCs must include local usage as part of a universal service offering. *Id.*; see Universal Service Order, ¶¶ 66-69. To date, the FCC has not quantified any minimum amount of local usage required to be provided by an ETC, but has initiated a separate rulemaking proceeding to address this issue. See Ex. 12, Universal Service Further Notice of Proposed Rulemaking, FCC 98-278 (Oct. 26, 1998) ("NPRM").

As explained by Mr. DeJordy, GCC will include unlimited local usage as part of a universal service offering and will comply with any minimum local usage requirements adopted by the FCC. (Ex. 3, p. 10; Tr. 38.) Neither US WEST nor the Independents presented any evidence that GCC would not or could not comply with such requirements. (Tr. 411; Tr. 205; Tr. 257.) The undisputed evidence shows that GCC meets this requirement.

c. Dual tone multi-frequency (“DTMF”) signaling or its functional equivalent

The third supported service is DTMF signaling or its functional equivalent. 47 C.F.R. § 54.101(a)(3). DTMF is a method of signaling that facilitates the transportation of call set-up and call detail information. Universal Service Order, ¶ 71. The FCC determined the benefits of this kind of signaling technology are essential to public health and safety, and should be included in the list of supported services. Id. Consistent with the principles of competitive and technological neutrality, other methods of signaling that are functionally equivalent to DTMF meet this service requirement. See 47 C.F.R. § 54.101 (a)(3); Universal Service Order, ¶ 71. Specifically, the FCC recognized that “wireless carriers use out-of-band digital signaling mechanisms . . . . [I]t is appropriate to support out-of-band signaling mechanisms as an alternative to DTMF signaling.” Universal Service Order, ¶ 71.

The uncontroverted evidence before the Commission demonstrates GCC currently uses out-of-band digital signaling and in-band multi-frequency signaling that is functionally equivalent to DTMF signaling. (Ex. 3, pp. 10-11.) GCC therefore satisfies this service requirement. US WEST and the Independents agree. (Ex. 16, p. 25; Tr. 205; Tr. 257.)

d. Single-party service or its functional equivalent

The fourth supported service is single-party service or its functional equivalent. 47 C.F.R. § 54.101(a)(4). "Single party service" means that only one party will be served by each subscriber loop or access line in contrast to a multi-party line. The FCC found single party service is important to safety and privacy and made it a supported service. Universal Service Order, ¶ 62. The FCC further recognized that a CMRS provider meets the requirement of offering single party service when it offers a dedicated message path for the length of a user's particular transmission. 47 C.F.R. § 54.101(a)(4); Universal Service Order, ¶ 62. As explained by GCC witness DeJordy, GCC currently provides a dedicated message path for the length of all wireless calls of a customer, and thus meets the FCC's requirement of providing single-party service. (Ex. 3, p. 11.) Neither US WEST nor the Independents disputes this fact. (Tr. 413; Tr. 205; Tr. 257.)

e. Access to emergency services

The fifth supported service is the ability to reach a public emergency service provider through dialing "911." 47 C.F.R. § 54.101(a)(5); Universal Service Order, ¶ 72. The FCC also included a requirement that a carrier must have the telecommunications components necessary for access to enhanced 911 or "E911," which includes the capability of providing both automatic numbering information ("ANI") and automatic location information ("ALI"), once the service is requested from the carrier. Universal Service Order, ¶ 73. However, the FCC further recognized that a wireless carrier is not required to provide access to E911 unless a local public emergency service provider has made arrangements for the delivery of ALI and ANI from carriers. Universal Service Order, ¶ 73. Consequently, until the service providers request and make arrangements for delivery of E911 calls, wireless providers such as GCC are not required to provide E911, and are not required to offer E911 service as a condition of ETC designation.

GCC presented undisputed testimony that it currently provides all of its customers with access to emergency services by dialing 911. (Ex. 3, p. 11.) Moreover, no PSAP in GCC's requested designated service areas has requested that GCC provide ALI and ANI information so E911 cannot be implemented and is not required. (Ex. 3, p. 11; Tr. 414.) The evidence shows GCC is in full compliance with all FCC rules and orders regarding E911, and GCC is prepared to meet any request for E911 by working with PSAPs on all issues. (Ex. 4, p. 8; Tr. 38-39.) In addition, Mr. DeJordy testified that even though the Company is not required to offer E911 service, GCC intends to provide its universal service subscribers with access to E911 service with the wireless access unit as soon as PSAPs are capable of receiving E911 information. (Tr. 38-39.) Because GCC provides access to 911 service, and has the necessary network components to provide E911, GCC meets the FCC's requirement. Neither US WEST nor the Independents offered any contrary evidence. (Tr. 414; Tr. 205; Tr. 257.)

f. Access to operator services

The sixth supported service to be provided by an ETC is the ability to access operator services. 47 C.F.R. § 54.101(a)(6). Access to operator services means any automatic or live assistance provided to a consumer to arrange for the billing or completion, or both, of a telephone call. Id.; Universal Service Order, ¶ 75. GCC demonstrated it currently satisfies this requirement by providing all of its customers with access to operator services. The service is provided by GCC directly to subscribers or indirectly through other entities, including LECs or interexchange carriers ("IXCs"). (Ex. 3, p. 12.) Both US WEST and the Independents agreed this requirement is met. (Tr. 406; Tr. 205; Tr. 257.)

g. Access to interexchange service

Access to interexchange service is the seventh service that an ETC must offer. 47 C.F.R. § 54.101(a)(7). As explained by the FCC, an ETC must offer consumers access to interexchange service for the purposes of making and receiving toll or interexchange calls. Universal Service Order, ¶ 78. Equal access to interexchange service, i.e., the ability of a customer to access a presubscribed long distance carrier by dialing a 1+number, is not a

requirement. Universal Service Order, ¶ 78; see also 47 U.S.C. § 332(c)(8). Nevertheless, GCC customers are able to reach their interexchange carrier ("IXC") of choice by the dialing of an appropriate access code. (Ex. 3, p. 12.)

As Mr. DeJordy testified, GCC presently meets this requirement by providing all of its customers with the ability to make and receive interexchange calls through interconnection arrangements which the Company has with several IXCs. (Ex. 3, p. 12.) Consequently, GCC satisfies this universal service requirement. US WEST and the Independents cannot and did not object. (Tr. 415; Tr. 205; Tr. 258.)

h. Access to directory assistance

The eighth supported service is access to directory assistance. 47 C.F.R. § 54.101(a)(8); see Universal Service Order, ¶ 80. GCC presently meets this requirement by providing all of its customers with access to directory assistance by dialing "411" or "555-1212." (Ex. 3, p. 12.) White pages directories and directory listings are not required services, as they are not "telecommunications services" under the Act. Universal Service Order, 81. No party introduced any evidence to suggest or otherwise question the fact that GCC meets this requirement. (Tr. 406; Tr. 205; Tr. 258.)

i. Toll limitation for qualifying low-income consumers

The final supported service to be provided by a federal ETC is toll limitation, which must be offered only to qualifying low-income consumers. 47 C.F.R. § 54.101(a)(9). Qualifying low-income consumers are customers receiving subsidies pursuant to the federal Lifeline program.<sup>3</sup> The FCC made toll blocking for Lifeline customers a supported service because it determined that uncontrolled toll charges were a significant factor in low subscribership levels among low-income consumers. Universal Service Order, ¶ 82.<sup>4</sup> GCC

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<sup>3</sup> Participation in the Lifeline program is an obligation of all ETCs, and is discussed *infra*, p. 21.

<sup>4</sup> The FCC no longer requires an ETC to separately provide "toll control" as part of the toll limitation services required under 47 C.F.R. § 54.101(a)(9). See Universal Service Fourth Order on Reconsideration, FCC 97-420 (Dec. 30, 1997).

currently has no Lifeline customers, and in fact cannot participate in Lifeline until it is designated an ETC. Once designated an ETC, however, GCC will participate in Lifeline, including offering toll blocking to Lifeline customers at no additional charge. (Ex. 3, p. 13; Tr. 39.)

The evidence before the Commission demonstrates GCC can and will provide toll blocking capability to Lifeline customers. GCC currently provides toll blocking services for international calls and customer-selected toll calls. GCC can and will use this same technology on its existing network to provide a toll blocking service for its Lifeline customers as part of its universal service offerings. (Ex. 3, p. 13.) There was no contrary evidence submitted to the Commission. (Tr. 417; Tr. 205; Tr. 258.) GCC satisfies the toll blocking requirement.

### **3. GCC Will Advertise the Availability of the Supported Services**

The third criterion for ETC designation under Section 214(e)(1) is an obligation to advertise the availability of universal service offerings, and the charges for such service offerings, using media of general distribution. 47 U.S.C. § 214(e)(1). Based upon the recommendations of the Joint Board, the FCC has not adopted any particular standards regarding advertising requirements, but has recommended that states establish advertising guidelines and monitor ETCs on an ongoing basis. Universal Service Order, ¶ 148. To date, the Nebraska Commission has not promulgated any specific advertising requirements.

As described by Mr. DeJordy, GCC currently advertises its wireless services to both residential and business customers through several different media, including newspaper, television, radio, and billboard advertising. GCC also maintains various retail store locations throughout its authorized service areas in Nebraska, which provide an additional source of advertising. (Ex. 3, pp. 16-17.) This advertising is not limited to advertising in business publications, but rather includes publications also targeted to the general residential market. (Ex. 3, p. 17.) Upon receiving ETC designation, GCC will offer its universal service packages using these same media of general distribution to advertise the availability of the

supported services and the corresponding charges in a manner that fully informs the general public. (Ex. 3, p. 17.) If directed by the Commission, GCC will also provide copies of such advertising to the Commission. GCC will further comply with any advertising form and content requirements adopted by the FCC or the Commission in the future and required of all ETCs. (Ex. 3, p. 17.)

Neither US WEST nor the Independents introduced any evidence suggesting any deficiency or challenge to GCC's plan and commitment to advertise the supported services. (Tr. 206, 254, 358, 427-28.) Accordingly, the Commission should properly determine this requirement has been met.

**4. GCC Will Make the Supported Services Available Throughout the Designated Service Areas**

An applicant for ETC designation must show it will make the supported services available to consumers throughout its designated service areas. 47 U.S.C. § 214(e)(1). Section 214(e)(5) of the Act defines the term "service area" as a geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms. 47 U.S.C. § 214(e)(5). For an area served by a rural telephone company, Section 214 (e)(5) and 47 C.F.R. § 54.207(b) provide that the term "service area" means the rural telephone company's "study area," unless and until the FCC and a state establish a different definition for such a company under the procedures set forth in 47 C.F.R. §§ 54.207(c) and (d). A "study area" is generally considered to be all of the rural telephone company's existing certificated exchange service areas in a given state. Universal Service Order, ¶ 172, fn. 434.

GCC seeks designation as an ETC in the study areas of each rural telephone company listed on revised Exhibit 5, and in all Aliant Communications, GTE, and US WEST exchanges listed on revised Exhibit 5. All of the study areas and exchanges are within GCC's existing signal coverage area as shown on Exhibit 6. (Tr. 41-42; see Exs. 5-6.)

GCC has thus shown that its requested service areas are consistent with the service area requirements in the Act, and has also shown the present ability and willingness to provide the required supported services throughout those areas. (Tr. 41-42.) As described by Mr. DeJordy:

As an ETC, one, we have indicated that we would be deploying in these wireless local loop devices that would enable signal where signal isn't available today. Additionally, we have the obligation and we have made the commitment that to the extent service cannot be made available simply by deploying the wireless local loop product.

(Tr. 112-113.) Neither US WEST nor the Independents offered any evidence that GCC's requested service areas were contrary to the Act, or that GCC could not actually serve those areas.<sup>5</sup> (Tr. 433; Tr. 266.)

US WEST and the Independents both suggested that the presence of certain undefined "gap" areas within GCC's requested service areas would prevent GCC from meeting an ETC's obligations. (Ex. 9, p. 16; Ex. 16, pp. 52-53.) However, GCC understands its obligations as an ETC to provide service wherever requested:

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<sup>5</sup> The Independents take issue with GCC because it will not be subject to state COLR obligations. (Ex. 10, p. 11.) Not only has the FCC specifically declined to make the imposition of state COLR obligations an ETC requirement (Universal Service Order, ¶ 142), it did so in part because the service obligations of an ETC under Section 214(e) are so similar to the protections inherent in state COLR obligations. Id. ¶ 143. State COLR obligations are not a relevant ETC criteria, and need not be considered by the Commission, in this proceeding.



One of the requirements is that you offer the supported services throughout the designated service area. As I will explain in greater detail below, this is a significant obligation that is imposed upon an ETC, is that when you establish a designated service area, you need to make that offering available to everyone and anyone that wants that service within the designated service area. That is a significant commitment that an ETC incurs once designated as an ETC. It is a commitment that Western Wireless has agreed and stated that it will meet. To the extent that the consumer doesn't -- to the extent that there may be gap in coverage in a certain area, we would fill in that gap by either using the wireless local loop unit which has a higher output power than a handheld phone.

(Tr. 41.) GCC further described that various engineering means can be used to provide signal coverage with a wireless local loop application, including placing an antenna at the home, increasing the power from the cell site, or even deploying an additional cell site. (Tr. 177-78.) GCC's testimony thus addresses and refutes any "gap" arguments made by US WEST and the Independents.

No landline LEC currently has facilities in place to serve every consumer within its service area. As Ms. Bittinger testified, if a new home is built, the LEC, upon request, will build facilities to reach that new consumer. (Tr. 214-15.) If the Commission applies the Independents' suggestion that all providers be subject to the same service requirements (Tr. 309), any gap in GCC's signal coverage will not be a disqualifying consideration in this proceeding. Instead, GCC will be obligated as an ETC to provide service to all who request, including extending facilities in a reasonable amount of time as may be necessary. Such a requirement is fair, consistent and competitively neutral. It is also an undertaking GCC has committed to meet. (Tr. 179-180.)

5. **This Commission has Not Adopted Any Additional Criteria for Federal ETC Designation**

This Commission has chosen to limit the eligibility criteria for federal ETC designation to those set forth in Section 214(e) of the Act:

We believe that to be designated an ETC, no criteria other than that set forth by the FCC and the Act should be required.

(Ex. 11, ¶ 5.) As a result, claims by intervenors that the Commission can or should add criteria for federal ETC designation are contrary to this Commission's prior Order, and would result in discriminatory treatment of GCC as compared to the landline LECs.<sup>6</sup> No additional state criteria exist, so none can be applied in this case.

6. **GCC Meets All Criteria to Be Designated an ETC**

GCC meets the requirements for ETC designation, which are limited to those prescribed by Section 214(e). Once designated as an ETC, GCC will also undertake to perform the obligations applicable to all ETCs. There can be no doubt that GCC can and will meet these obligations.

a. **GCC's universal service offering is clearly defined**

GCC currently provides the FCC's supported services with its existing network throughout its requested service areas:

We have antenna sites, cell sites, towers, trunking. We have switching facilities. We have three in the state of Nebraska that is able to provide conventional cellular service today and is capable of providing the universal service offering.

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<sup>6</sup> For example, US WEST is likely to continue to argue that the Commission should require that GCC make available a "bare bones" universal service offering. (See Ex. 16, pp. 46-48.) The FCC did not impose such a requirement, and the FCC's decision was upheld by the Texas PUC Court. Texas PUC, 183 F.3d 393, 419. In addition, no such requirement was imposed on the LECs when they were designated as ETCs. Under these circumstances, the imposition of this or other additional requirements on GCC would be unfair, discriminatory and unlawful. Nevertheless, GCC's universal service offering is a "Bare Bones" offering and the customer would have an option to purchase various other service features.

(Tr. 40.) Because it is not yet an ETC authorized to provide subsidized universal service, GCC has not offered a universal service package that reflects federal subsidies. However, GCC has made clear what its universal service offerings will be once it is designated:

In terms of our universal service offering, I think our testimony is pretty clear as to what that would be. We have identified that we would take the FCC's supported services and package them into a universal service offering and price them in a manner consistent with universal service. What that means to us is that for a fixed monthly charge, we would provide local dial tone to the consumer much like that is offered today by the incumbent local telephone company. The features of that service would be precisely the features identified in the FCC's identified supported services. It would include access to 911, access to long distance, directory assistance. It is basically the core service that is offered today by incumbent local telephone companies. That is the service that we would be offering today. I don't think there is anything that is unknown about the service offering. That is the service offering. It is basic dial tone service to the consumer with all the features and functionalities identified in the FCC's rules. Additionally, we have indicated that we would offer consumers an expanded local calling area. Our experience in the market is that consumers, especially consumers in rural areas, want an expanded local calling area. Many times, these communities are fairly small. There may be several hundred people in the community. In (sic) their existing local calling area B only reaches out to other communities that may be similarly small, but does not reach out to some of the bigger communities that they may typically make calls to. We have identified that we would expand the local calling area that is offered today by the incumbent telephone companies and offer consumers what they want. We perceive that consumers want an expanded local calling area based upon the research that we have done.

(Tr. 42-43.) This can and will be done by GCC upon receiving ETC designation. (Ex. 4, p. 6.)

Initially GCC will provide universal service through the use of wireless local loops, which can be accomplished using GCC's current network. (Tr. 40.) A wireless local loop simply involves the installation of a wireless access unit and a high-gain antenna if necessary at a customer's location to transmit the signal to the nearest cell site. (Tr. 41-42.) The technology functions as a replacement for the "last mile" of copper wire of the incumbent

LEC. The radio transmitter equipment serves as the interface to GCC's network over the CMRS spectrum in the same manner as a handheld cellular phone. (Tr. 40.) However, the signal coverage of a wireless local loop is optimized over the customer using a handheld or portable phone as the transmitter and receiver. A wireless local loop service provides a consumer with "dial tone" service and the ability to connect their existing telephones and peripheral devices to the GCC wireless network. (Tr. 40-41.) Using this same network configuration, an affiliate of GCC currently provides a type of "universal service" to residents of Reese River and Antelope Valley, Nevada, and Regent, North Dakota. (Ex. 3, p. 14.) GCC's universal service offerings will also have a limited mobility component that will allow consumers to use their wireless access unit phone outside of the home. (Tr. 99.)

In order to effectively compete, GCC will tailor its universal services offerings to meet the needs of consumers. (Ex. 4, p. 15.) One such offering will look similar to services provided today by the LECs with certain additional features. For example, for a fixed monthly charge, GCC will offer consumers the FCC's core services with unlimited local usage, an expanded local calling area larger than offered by the incumbent LEC, a per minute charge for long distance calls, and optional features and services for an additional charge, such as voice mail, caller-ID, call waiting, call forwarding, and conference calling. Another offering could be a usage sensitive plan under which a universal service customer would receive 750 minutes of usage with an expanded local calling area, a per minute charge for interstate calls, and optional features and services. (Ex. 3, pp. 15-16.) GCC has clearly shown it will provide universal service consistent with applicable rules once designated an ETC, and GCC has described its service in great detail. Any additional arguments that GCC's service is vague (Ex. 16, p. 22) or not well defined (Ex. 10, p. 22) must be rejected by the Commission.

b. GCC will undertake Lifeline and Link-Up obligations

GCC also demonstrated it will meet all requirements applicable to an ETC regarding the federal Lifeline and Link-Up programs. See 47 C.F.R. §54.401-414. Once designated, all ETCs are required by FCC regulations to make available Lifeline service to qualifying low-income consumers. 47 C.F.R. §54.405. The “Lifeline” service consists of the same core services or functionalities enumerated in FCC Rule 54.101(a)(1)-(9). 47 C.F.R. § 54.401(a)(3). Under the Lifeline and Link-up programs, low-income consumers pay reduced charges for start-up and monthly service as a result of federal support to the carrier. A consumer must certify to an ETC that the consumer participates in one of the following federal programs: Medicaid, food stamps, supplemental security income, federal public housing assistance, or Low-Income Home Energy Assistance. 47 C.F.R. § 54.409. The ETC must also make the discounts available to the customer, seek reimbursement from the program funds and must otherwise comply with the Lifeline and Link-Up regulations in 47 C.F.R. § 54.401 et seq.

The evidence before the Commission demonstrates GCC will participate in the Lifeline and Link-Up programs, and will comply with all applicable regulations once designated as an ETC. (Ex. 3, p. 13.) Neither US WEST nor the Independents has suggested that GCC is not able to meet this obligation of ETC designation. (Tr. 418-19.) The Commission should conclude GCC is able to meet these obligations.

c. Provision of universal service is an obligation of ETCs, not a prerequisite to ETC designation

GCC has demonstrated it will meet its obligations to offer universal service once designated an ETC. US WEST and the Independents nevertheless suggest that such an offering must precede ETC designation. (Ex. 16, pp. 19-20; Tr. 258.) This argument must be rejected by the Commission. The criteria in Section 214(e) and the FCC’s regulations do not require GCC to actually be providing a universal service offering to customers or advertising

such an offering as a prerequisite to ETC designation. To suggest that an applicant must already be performing the obligations of an ETC, including advertising and offering a subsidized universal service package as a precondition to ETC designation is a nonsensical reading and application of the statutory requirements under Section 214(e). In fact, it is not feasible for a carrier to be actually providing and advertising a universal service offering prior to ETC designation, because only a designated ETC can receive the necessary subsidies and participate in the Lifeline program. See 47 C.F.R. § 54.400-.415 (only “eligible telecommunications carriers” serving qualified consumers are entitled to receive Lifeline support).

The Independents and Commission Staff’s assertion that GCC must first be providing universal service before being designated an ETC is simply contrary to law. The proper reading of Section 214(e)(1) and (2) requires the Commission to determine whether a common carrier is capable of providing the supported services and whether a carrier’s plans to offer and advertise universal service is consistent with applicable law. As stated by the FCC, “a carrier must meet the section 214(e) criteria as a condition of its being designated as an eligible carrier and then must provide the designated services to customers pursuant to the terms of section 214(e) in order to receive support.” Universal Service Order, ¶ 137 (emphasis in original). The actual obligation to “offer” and “advertise” the services under Section 214(e)(1) are not preconditions to ETC designation, but instead obligations of a carrier upon receipt of its ETC designation.

In addition, no carrier could as a practical matter be expected to effectively compete or actually provision universal services to a customer without the ability to receive the intended subsidy. (Ex. 3, pp. 14-15.) And, the subsidy is not available to a carrier unless it has already been designated as an ETC. (Ex. 3, p. 15.) The specific statutory language even

uses the past tense in requiring a common carrier “designated as an eligible telecommunications carrier” to offer and advertise the services. 47 U.S.C. § 214(e)(1) (emphasis added). A fair reading of the statutory language does not imply that an applicant must first be providing and advertising a universal service offering prior to receiving the necessary ETC designation by the Commission.<sup>7</sup>

**7. The Commission Can Ensure that GCC Continues to Meet all Applicable ETC Criteria**

The intervenors are likely to suggest the Commission should not grant ETC designation unless it has full rate, entry and service regulation over GCC’s universal service offerings. Although such regulation is neither lawful nor necessary, GCC fully agrees that some Commission oversight of its ETC status is appropriate. As the agency responsible for making ETC designations, the Commission will retain continuing oversight and authority over GCC and all other ETCs to ensure the criteria applied in making the initial federal and state designations remain satisfied. GCC has never claimed it will be untouchable as an ETC. (See Ex. 4, p. 15; Tr. 52.)

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<sup>7</sup> US WEST will likely argue that the FCC's procedures for designating ETCs under 47 U.S.C. § 214(e)(6) support its argument that compliance with all ETC obligations must precede designation. To the contrary, the FCC's procedures specifically allow for either retroactive or prospective designation, which is completely inconsistent with US WEST’s argument. See Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act, FCC 97-419, 1997 FCC Lexis 7194, at \*8 (Dec. 29, 1997).

While GCC's ETC designation will not allow the Commission to regulate its entry, rates or underlying services (Universal Service Order, ¶ 147), the Commission clearly maintains ongoing authority and responsibility for ensuring that GCC continues to meet the Section 214(e) ETC criteria as a federal ETC and NUSF criteria as a state ETC. The Washington Commission properly recognized this role of a state commission when it designated a CMRS provider as a federal ETC:

Though the federal Act does not specify the means for revocation or modification of an ETC designation, the Commission has authority under state law to reopen any matter before it. RCW 80.04.210. Further, the federal Act contemplates such as it allows a state commission to designate ETCs on its own motion. 47 U.S.C. § 214(e)(1)(2). There is nothing in that provision which limits a state commission on its own motion from redesignating a company already designated and in effect modifying the prior designation.

Order Designating Eligible Telecommunications Carriers, Washington Util. & Transp. Comm'n Docket Nos. UT-970333 et al., p. 15 n.10 (Dec. 23, 1997). (Copy attached.) This analysis is consistent with the FCC's own statement that "[A] carrier's continuing status as an eligible carrier is contingent upon continued compliance with the requirements of section 214(e)." Universal Service Order, ¶ 138.

The Washington Commission specifically discussed this oversight role on issues related to service quality by a CMRS provider designated as an ETC:

Staff originally urged the Commission to include as part of the condition of granting ETC status a requirement that the carriers, including U.S. Cellular, abide by Commission service quality standards set forth in WAC 480-120. A number of carriers contested the Commission's authority to so condition the designation. We need not reach that issue of legal authority as we conclude that the carriers' obligation to "offer the services that are supported by Federal universal service support mechanisms," as required by 47 U.S.C. § 214(e)(A), connotes not just willingness to offer the services, but actual performance of the services. Such performance in turn connotes performance of the services at an adequate service level. As set forth below, whether an ETC-designated carrier



is actually performing such service could arise in a proceeding to modify, revoke, or suspend the designation.

Order Designating Eligible Telecommunications Carriers, Washington Util. Transp. Comm'n Docket Nos. UT-970333 et al. p. 14 (Dec. 23, 1997) (emphasis added). Consequently, it is entirely appropriate that the Commission exercise this continuing authority with regard to all ETCs it designates under the Act, including GCC.

Contrary to the intervenors' expected arguments, the Commission cannot make a "land line substitutability" determination under Section 332(c)(3) and assert rate and entry jurisdiction over the CMRS service to be provided by GCC. The intervenors may argue the Commission should regulate the rates and entry of GCC's universal service offering pursuant to a portion of 47 U.S.C. § 332(c)(3)(A) which states:

Nothing in this subparagraph shall exempt providers of commercial mobile services (where such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State) from requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the universal availability of telecommunications service at affordable rates.

47 U.S.C. § 332(c)(3)(A) (emphasis added). This argument presents two issues. First, whether such a finding can be made for a single CMRS carrier, i.e. GCC, and second, whether such a finding is factually supported on the record evidence in this proceeding. The Commission should conclude the answer is no to both.

First, Section 332(c)(3)(A) is clearly intended to allow states to regulate all CMRS providers when CMRS as a whole is determined to be a substitute for land line service for a substantial portion of a state. Nothing in this provision suggests this can be used as an avenue to regulate CMRS on a carrier-by-carrier basis. In fact, regulation on a carrier-by-carrier basis